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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,422

09/15/2005

Jose Luiz Whitaker Ribeiro

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ELMAN TECHNOLOGY LAW, P.C.
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EXAMINER

KWIECINSKI, RYAN D

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

09/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,422	RIBEIRO, JOSE LUIZ WHITAKER	
	Examiner	Art Unit	
	RYAN D. KWIECINSKI	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 29 and 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 August 2009 has been entered.

Claim Objections

Claims 31-32 are objected to because of the following informalities:

Claim 31 recites the limitation "the holes of the vertical flanges" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "whose through-holes" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "the through-holes of the upper flange" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,026,538 to Boyd et al. in view of US 3,629,985 to Ueno in view of US 5,010,603 to Hertzog.

Claim 28:

Boyd discloses a modular pool, comprising substantially vertical side walls (30, Fig.5) comprising modular metallic panels (30) and a floor (34) comprising metallic tiles (34), each one of said modular metallic panels comprising a central vertical rectangular portion (35, Fig.5) with flanges along its horizontal and vertical edges (36), the horizontal flanges along the horizontal edges being at right angles to said central portion (36), and the vertical flanges along at least one of the vertical sides being at right angles to said central portion (36), wherein said central vertical rectangular portion is flat (35), each side wall comprising one or more assemblies formed by the superposition of two or more said modular metallic panels assembled in a vertically coincident relationship with their vertical sides rectilinearly aligned (30, Fig.5), the juxtaposed horizontal flanges of said superposed modular metallic panels being joined by a semi-permanent attaching means (Column 4, lines 25-

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27) and the vertical flanges of each assembly being vertically aligned in a rectilinear relation (Fig.5).

Boyd does not disclose the base surface formed from a lattice of metallic beams and sleepers, nor does Boyd disclose a vertical member interposed between vertical flanges of adjacent assemblies.

Ueno discloses said side walls and said floor resting upon a base surface (the beams seen in Fig. 9 and 11) formed from a lattice comprising metallic U-shaped beams (15, Fig.11) with metallic U-shaped sleepers (6') placed crosswise between said beams.

Hertzog discloses a vertical member (50, Fig.9) which has its length substantially equal to the height of said assemblies being interposed between the vertical flanges of adjacent assemblies (Fig.8), and attached thereto by semi-permanent attaching means (52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the modular pool of Boyd with a support surface formed from u-shaped metallic beams and sleepers in order to form a secure, sturdy base supporting surface for the metallic tiles of the floor of the modular pool. Forming floor frame work from lattice to provide a string supporting surface it notoriously well known in the art.

It also would have been obvious to have formed the side wall assemblies with vertical members in order to secure the modular panels to one another and also forming a seal between the panels. The attaching means as well as the vertical members

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provide a durable and structurally sound modular pool assembly and form a tight, secure joint between adjacent panels.

Claim 30:

Boyd in view of Ueno in view of Hertzog discloses the modular pool of claim 28, Hertzog discloses wherein said vertical member is a plate (50 is formed from strip of metal).

Claim 31:

Boyd in view of Ueno in view of Hertzog discloses the modular pool of claim 28, Hertzog also discloses wherein said vertical member is an angle iron (50) provided with through-holes in positions coincident with the holes of the vertical flanges (bolt 52 secures the vertical member with the flanges with coincident holes) of the assemblies forming a corner of the pool (between two panels connected at an angle).

Claim 32:

Boyd in view of Ueno in view of Hertzog discloses the modular pool of claim 28, Boyd also discloses wherein a lengthwise reinforcement is provided at the top of the pool's walls by a plate (40, Fig.5) whose through-holes are coincident with the through-holes of the upper flanges of the upper modular panels of said assemblies.

Boyd does not disclose wherein the plate is metal.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the lengthwise reinforcement plate from a structurally sound piece of material such as a metal. It also would have been obvious to have formed the plate from the same material as is being used to form the entire modular pool. This will eliminate extra costs by reduce the amount of different materials used for the modular pool and will also provide a reinforcement that is strong and non-corrosive.

Allowable Subject Matter

Claims 29 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. KWIECINSKI whose telephone number is (571)272-5160. The examiner can normally be reached on Monday - Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

RDK
/Ryan D Kwiecinski/
Examiner, Art Unit 3635